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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/374,117	08/16/99	FORTE	PM-251091

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EXAMINER
ROCHE, L

ART UNIT	PAPER NUMBER
1771	6

DATE MAILED: 02/12/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/374,117

Applicant(s)

FORTE, NICHOLAS F.

Examiner

Leanna Roche

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 26-29 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 1999 is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 18) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Figures 1-3 are not disclosed within the specification at all. Correction is required.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: Figure 4 includes parts labeled #7 and #28, both of which are not described in the specification. Correction is required.
4. Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect can be deferred until the application is allowed by the examiner.
5. The drawings are objected to because portions of Figures 3 and 4 are not missing due to holes in the pages. Correction is required.

Specification

6. Applicant is reminded of the proper language and format for an abstract of the disclosure.

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The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

7. The use of the trademarks Dow, BASF, Heritage, Ampacet, Pebax, Atochem, Hytrel, Dupont, Viton, Lotader, Plexar and ASTM has been noted throughout this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

8. Claim 27 is objected to because of the following informalities: line 9 states "about 1 to about 98% by volume". However, the specification discloses that the D layer may range in volume percent from "about 2 to about 98%" (Page 10 line 10). Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 29 recites the limitation "said A layer" in line 25. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langley (USPN 5560974).

Langley is directed to a breathable non-woven composite (Column 1 lines 14-15) which provides a barrier to penetration by pathogens (Column 4 lines 21-22) and prevents the passage of blood or other body fluids (Column 1 lines 18-19). The non-woven composite is constructed of a microporous thermoplastic film (Applicant's microporous adhesive core layer) having at least one film surface thermally bonded to a layer of non-woven thermoplastic materials (Applicant's outer monolithic layer) (Column 4 lines 5-9). Alternatively, the non-woven layer can be bonded on both sides of the microporous film (Column 1 lines 26-28). The non-woven thermoplastic layer of Langley allows the passage of water vapor (Column 1 line 20) and is substantially free of particulate filler (Column 6 lines 10-13). The microporous film of Langley allow the passage of water vapor but forms a barrier to the passage of water-based liquids (Column 6 lines 36-40).

In Langley, the microporous layer acts as an adhesive layer when thermal bonding is used. It would have been obvious to one of ordinary skill in the art to use thermal bonding to form the laminate (Column 4 lines 5-9), motivated by the desire to obtain a bonding means which does not require adhesive. The prevention of buildup of particulate material on a die during formation of the multilayer breathable film is directed to the making of the film, rather than the structure made, the structure being the focus of this examination.

In regards to Claims 27-29, Langley discloses a non-woven thermoplastic layer with a weight from about 0.2 to 2.5 ounces per square yard (Column 6 lines 3-5) and a microporous thermoplastic film with a weight of 0.85 ounces per square yard (Column 6 lines 36-45), but does not specifically disclose Applicant's claimed volume ratios. It would have been obvious to one of ordinary skill in the art at the time of the invention to produce a composite film with layers which fall into Applicant's claimed volume ratios, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. In the present case, it would have been obvious to optimize the volume ratio of the composite film to obtain a film which is cost effective in that the most expensive material is used in the least volumetric proportion.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Barnes et al. (USPN 4761326) discloses a water vapor

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permeable bacterial barrier comprised of a continuous network of an open cell microporous foam sandwiched between two layers of polyester nonwoven textile-type substrate, the foam acting as a means of bonding the two outer substrate layers. Molde (USPN 4433026) discloses a three layer laminate which is permeable to steam, but prevents the passage of bacteria and which is comprised of a middle layer of plastic film material and two outer layers of plastic fabric material secured to opposed sides of the middle layer.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leanna Roche whose telephone number is 703-308-6549. The examiner can normally be reached on Monday through Friday from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Leanna Roche

Blaine Copenheaver
BLAINE COPENHEAVER
PRIMARY EXAMINER

lmr
February 8, 2001